

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

ANDREW SASSER

PETITIONER

v.

No. 4:00-CV-04036

WENDY KELLEY, Director,
Arkansas Department of Correction

RESPONDENT

ORDER

Pursuant to the memorandum opinions entered this same day, IT IS THEREFORE ORDERED that Petitioner Andrew Sasser's petition for a writ of habeas corpus (Doc. 48) is GRANTED IN PART and DENIED IN PART.

The petition is DENIED with respect to Sasser's Eighth Amendment claims, insofar as Sasser has not shown that he had an intellectual disability at the time he committed the crime such that his execution would be unconstitutional under *Atkins v. Virginia*, 536 U.S. 304 (2002) and progeny.

The petition is further DENIED with respect to the first and fourth grounds of Sasser's Sixth Amendment ineffective assistance of counsel claims, which were remanded to this Court for further consideration in *Sasser v. Hobbs (Sasser II)*, 735 F.3d 833 (8th Cir. 2013).

The petition is GRANTED with respect to the second and third Sixth Amendment ineffective assistance of counsel claims remanded to this Court in *Sasser II*. Trial counsel provided unconstitutionally inadequate assistance during the penalty phase of Sasser's trial by failing to obtain a timely psychological evaluation of Sasser and failing to meaningfully consult with a qualified mental health professional, and a writ of habeas corpus will therefore issue.

Because this Court possesses authority to "dispose of the matter as law and justice require," 28 U.S.C. § 2243, and to "fashion appropriate relief other than immediate release, *Peyton v. Rowe*,

391 U.S. 54, 66 (1968), and because Sasser's petition is granted only with respect to ineffective assistance of counsel during the penalty phase of his trial, IT IS FURTHER ORDERED that Andrew Sasser's sentence of death is VACATED, but that his conviction remains as adjudicated.

A writ of habeas corpus shall issue immediately commanding the Director of the Arkansas Department of Correction to retain custody over Andrew Sasser on the basis of his conviction until final resolution of further proceedings.

After any appeal of this Court's opinions and order affirming this result becomes final, or after the time for appeal has run, a writ shall then issue commanding the County Circuit Clerk for the Circuit Court of Miller County, Arkansas to reopen Andrew Sasser's case, CR-93-348-3, for further proceedings following Ark. Code Ann. § 5-4-616.

IT IS FURTHER ORDERED that Respondent provide copies of this order, the writ issued to her, and the Court's memorandum opinions to the Governor of the State of Arkansas immediately upon receipt of notice of the entry of those items on the docket, and to the County Circuit Clerk for the Circuit Court of Miller County, Arkansas, and the Prosecuting Attorney for the Eighth Judicial District South of Arkansas, within 7 days of entry of this order so that they might have notice of the outcome of these proceedings and adequate time to prepare for further proceedings.

IT IS SO ORDERED this 2nd day of March, 2018.

P.K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE